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Remarks

Claims 1-21 are pending in the application.

Claims 7, 18 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 8-14 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

Claims 1-6, 8-13, 15-17, 19 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Kim et al. (US 2004/0131026, hereinafter "Kim").

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Entry of this Amendment is proper under 37 CFR 1.116 since the amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issue requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution; (c) satisfies a requirement of form asserted in the previous Office Action; (d) does not present any additional claims without canceling a corresponding number of finally rejected claims; or (e) places the application in better form for appeal, should an appeal be necessary. The amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. Entry of the amendment is thus respectfully requested.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in

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the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewriting to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

#### **Objection to Claims 7, 18 and 20**

Claims 7, 18 and 20 are objected to, but were indicated to be allowable if rewritten in independent form.

Applicants thank Examiner for indicating the allowable subject matter in these claims. However, as set forth above, independent claims 1, 8 and 15 are not anticipated by Kim, and thus, patentable under 35 U.S.C. §102. Thus, claims 7, 18 and 20, which depend from claims 1 and 15 are also patentable under 35 U.S.C. §102.

Therefore, Applicants respectfully request that the rejection be withdrawn.

#### **Rejection Under 35 U.S.C. 101**

Claims 8-14 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. The rejection states "the limitation 'a computer readable medium containing a program' is not patentable since the limitation does not fall under one of the statutory categories such that process, machine, manufacture or composition of matter."

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The objection continues "the preamble of the claim 8-14 must start out as 'a computer readable medium having stored a computer program'."

The suggested amendments have been made (in slightly modified form) in the currently amended claims listing. Therefore, Applicants respectfully request that the rejection be withdrawn.

### **Rejection Under 35 U.S.C. 102**

Claims 1-6, 8-13, 15-17, 19 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Kim. The rejection is traversed.

Kim teaches providing multimedia broadcast/multicast service (MBMS) in which the particular transmission scheme used for all user equipment (i.e., point-to-point (PTP) or point-to-multipoint (PTM)) is selected according to, for example, two parameters; namely, (1) the number of user equipments in the cell and (2) the total transmitted code power reported by a node for that cell (e.g., the cell tower). Depending on whether one of these parameters exceeds a respective threshold level, the transmission scheme is switched from PTP to PTM, or vice versa (see, e.g., Abstract, paragraphs 43-44, 47, 61-63).

The Office Action interprets Kim as teaching the applicant's claimed invention of "determining a first subset of the plurality of users and a second subset of the plurality of users based upon the measured power ratios." This is incorrect. Kim's transmission scheme for all users is determined based on whether the number of users is: 1) smaller than a threshold, or 2) larger than or equal to a threshold. That is, irrespective of the number of users being above or below a threshold level, all users in a cell in Kim receive service via the same transmission scheme. Thus, Kim cannot possibly be construed as teaching multiple transmission schemes within the same cell.

The following passage clearly shows Kim teaching to the contrary, transmitting MBMS services *not* to two distinct groups via two different transmission schemes, but instead an entire cell, using just one (PTM or PTP) transmission scheme.

*When the number of UEs located in a particular cell is larger than or equal to the threshold, an MBMS service is provided in the PTM scheme. In*

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*contrast, if the number of UEs located in the particular cell is smaller than the threshold, the MBMS service is provided in the PTP scheme (par. 20, lines 9-13, emphasis added).*

In addition, the office action contends that Kim's measurement of "total transmission power," is the same as the Applicant's aforementioned "measured power ratio." But in actuality, the two respective types of measurements are completely opposite from each other.

The Applicant's claimed invention measures an actual "power-to-noise ratio at each of the end users" (page 8, lines 10-11). It is well known that power-to-noise measurements are accomplished by taking a received signal/power level measurement, which the Applicant does as he continues with "each end user (such as UE 222 in FIG. 2) measures the received pilot signal power and interference" (page 10, lines 11-12, emphasis added). Kim, however, is not taking a power-to-noise ratio measurement, and correspondingly is not measuring received signal/power during any point of his method. Rather, when Kim's "total transmission power" measurement, is actually measuring total "transmitted code power consumed by a Node B" (par. 054, lines 41-42, emphasis added). Node B is not even UE, but a cell, as Kim establishes with "for the convenience of explanation, the term 'Node B' and the term 'cell' will be used with the same meaning" (par. 11, lines 1-2).

Referring to previous claim 2 (with similar limitations now included in claims 1 and 8), the examiner states "delivering said message to the second subset of the plurality of users via a second scheme" is taught by Kim transmitting a "notification message," supposedly to a second group of user equipments. This is not correct.

First, as discussed above, Kim does not teach a "second group of users." Second, the "notification message" described is one from the cell/Node-B aimed at "setting up a dedicated channel to support the PTP scheme" (par. 75, lines 28-29). It is well known in the art to send this type of a message anytime a cell/Node-B is going to communicate with a UE via a PTP scheme. It happens in the case of Kim, however, that the

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communication being sent is a MBMS service that will correspondingly be sent via PTP to the entire cell, not a *first* or *second* subset group of UEs.

Since Kim fails to disclose each and every element as provided in claim 1, claim 1 is not anticipated by Kim, and thus, patentable under 35 U.S.C. 102(e).

Independent claim 8 recites relevant limitations similar to those recited in claim 1 and, therefore, for at least the same reasons discussed above with respect to claim 1, claim 8 is also allowable over Kim under 35 U.S.C. 102(e).

Independent claim 15 recites, in part: "said IMM transmitting said messages via two different transmission schemes via two different transmission schemes to two subsets of the plurality of users according to the power transmission requirement information."

Since Kim teaches only transmitting either in PTP or PTM scheme (e.g., switching from PTP to PTM, depending on the result of measured vs. threshold comparison) to all users, but not using both schemes to transmit to different subsets of users, Applicants' claim 15 is not anticipated by Kim. Therefore, claim 15 is thus allowable under 35 U.S.C. 102(e).

Since all of the dependent claims that depend from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over Kim under 35 U.S.C. 102.

As such, claims 1-6, 8-13, 15-17, 19 and 21 are patentable under 35 U.S.C. §102. As such, the rejection should be withdrawn.

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**New Claim**

New claim 21, which depends from claim 1, has been added. The subject matter of claim 21 is supported by the original specification, e.g., p. 7, line 31 to p. 8, line 2. Thus, no new matter has been added in this new claim. Since independent claim 1 is not anticipated by Kim, claim 21 is also patentable under 35 U.S.C. §102.

**Secondary References**

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to Applicants' disclosure than the primary references cited in the Office Action. Therefore, Applicants believe that a detailed discussion of the secondary references is not necessary for a full and complete response to this Office Action.

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Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

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Eamon J. Wall  
Registration No. 39,414  
Attorney for Applicants

PATTERSON & SHERIDAN, LLP  
595 Shrewsbury Avenue, Suite 100  
Shrewsbury, New Jersey 07702  
Telephone: 732-530-9404  
Facsimile: 732-530-9808

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